IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 3 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHHAYABEN SUHASHBHAI

Versus

COMMISSIONER OF WELATH-TAX

Appearance:

MR JP SHAH for Petitioner No. 1

MR Tanvish BHATT, Standing Counsel for Respondent.

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 19/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the assessee, the following questions are referred for our opinion :

1. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the life interest of the assessee in Suhasbhai Vadilal Family Trust No.1 and Suhasbhai Vadilal Family Trust No.2 has to be valued only by applying the provisions of Rule 1B of the W.T. Rules and not by actuarial method of valuation representing the market value of the interest in accordance with the provisions of sec.7 of the W.T. Act ?"

2. "Whether the facts and in the circumstances of the case, the Tribunal was justified in not accepting the value of life interest in Suhasbhai Vadilal Family Trust No.1 and Suhasbhai Vadilal Family Trust No.2 as determined by the Actuary ?"

2. The applicant assessee is assessed to wealth-tax as an individual. The relevant valuation date was 31st March 1978. The applicant had a life interest in Suhasbhai Vadilal Family Trust No.1 and Suhasbhai Vadilal Family Trust No.2. The value of life interest was declared by the applicant on the basis of actuarial valuation report of an approved Actuary. The same was accepted by the Wealth Tax Officer while finalising the assessment order. However, the Commissioner of Wealth Tax exercised his powers under sub-section (2) of Section 25 of the Wealth Tax Act (hereinafter referred to as "the Act") and set aside the order of the Wealth Tax Officer on the ground that value of the life interest should have been determined as provided in Rule 1-B and not on actuarial valuation basis. The Tribunal confirmed the said order of the Commissioner of Wealth Tax and therefore this Reference at the instance of the assessee.

3. We have heard Mr. J.P. Shah, learned counsel for the assessee and Mr. Tanvish Bhatt, learned Standing Counsel for the Revenue. Mr. Shah submitted that Rule 1-B of the Wealth Tax Rules prescribing the particular method for valuation of life interest, invoked by the Commissioner of Wealth Tax was only directory in nature and therefore it was open to the assessee to contend that the value of her life interest was rightly accepted by the Wealth Tax Officer on the basis of the actuarial valuation report. It is submitted that actuarial valuation is one of the recognised methods of valuing life interest and therefore the Commissioner of Wealth

Tax was not justified in exercising his powers under sub-section (2) of Section 25 of the Act.

4. On the other hand, Mr. Bhatt, learned counsel for the Revenue has submitted that Rule 1-B was mandatory in nature and in the context of the other Rules regarding valuation the Apex Court has already held that the rules of valuation were introduced in order to impart a uniformity in valuation and to avoid vagaries and disparities resulting from application of different methods of valuation in different cases where the nature of the property is similar. The learned counsel relied on the decisions of the Apex Court in Bharat Hari Singhania Vs. C.W.T. 207 ITR Page 1 and C.W.T. Vs. Shravan Kumar Swarup and Sons, 210 ITR Page 886.

5. Having heard the learned counsel for the parties, we are of the view that there is considerable substance in the submissions made by Mr. Tanvish Bhatt on behalf of the Revenue. In Bharat Hari Singhania's case (Supra), the Supreme Court rejected the contention that the rules of valuation such as Rule 1-D and other rules inserted in the Wealth Tax Rules were not mandatory in nature. The Apex Court referred to the rules providing for the method of valuing life interest (1B), house property (1BB), unquoted preference shares (1C),unquoted equity shares (1D) and various other properties and observed that it was difficult to believe that none of the rules govern the valuation by the Valuation Officer. The rules for valuation are meant for valuing all kinds of assets and many of the assets present inherent difficulties in valuing them. The Apex Court then observed in terms that Their Lordships were of the opinion that the Valuation Officer is equally bound by Rule 1D, with which the Court was concerned in that case, "as indeed he is bound by all the other rules made under the Act". Again in Shravan Kumar Swarup and Sons' case (Supra) while dealing with the provisions of Rule 1BB qua valuation of house property, the Apex Court made the following pertinent observations :

> "Rule 1BB of the Wealth-tax Rules, 1957, which came into force on April 1, 1979, prescribing the method of valuing a house wholly or mainly used for residential purposes, merely provides a choice amongst well-known and well-settled modes of valuation. Even in the absence of rule 1BB, it would not have been objectionable, nor would there have been any legal impediment, to adopt the mode of valuation

embodied in rule 1BB, namely, the method of capitalisation of income on a number of years' purchase value. The rule was intended to impart uniformity in valuation and to avoid vagaries and disparities resulting from application of different modes of valuation in different cases where the nature of the property is similar.

Rule 1BB partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognised and accepted methods. The rule is procedural and not substantive and is applicable to all proceedings pending on April 1, 1979, when the rule came into force.

Procedural law, generally speaking, is applicable to pending cases. No suitor can be said to have a vested right in procedure."

6. In view of the aforesaid discussion, we are of the opinion that the Tribunal was right in law in holding that the life interest of the applicant-assessee in the Trust in question had to be valued only by applying the provisions of Rule 1B of Wealth Tax Rules and not by actuarial method of valuation.

7. In view of the above discussion, our answer to both the questions is in the affirmative, that is in favour of the Revenue and against the assessee.

8. The Reference accordingly stands disposed of.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]